



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

RADER FISHMAN & GRAUER PLLC
LION BUILDING
1233 20TH STREET N.W., SUITE 501
WASHINGTON DC 20036

COPY MAILED

FEB 09 2009

OFFICE OF PETITIONS

In re Application of	:	DECISION ON
Aoki et al.	:	PETITION
Application No.: 10/526490	:	
Filing or 371(c) Date: 03/04/2005	:	
Attorney Docket Number: SON-2842	:	

This is a decision in response to the Request to Withdraw Erroneous Notice of Abandonment, filed December 17, 2008. The petition is properly treated under 37 CFR 1.181.

The Petition is hereby **granted**.

Background

A Notice of Abandonment was mailed on December 11, 2008, indicating that the application became abandoned for failure to timely and properly reply to the final Office action, mailed April 28, 2008. The Office action set a three (3) month period for reply, and provided for extensions of time under 37 CFR 1.136(a).

The present petition

Applicant files the present petition and asserts that a timely response to the Office was filed, including a Pre-Appeal Brief Request for Review and Notice of Appeal, and a request and fee for a two (2) month extension of time, on September 23, 2008. Applicant asserts that the Notice of Abandonment was mailed in error and requests withdrawal of the Notice.

A review of the application file

The application file reveals that a final Office action was mailed April 28, 2008. Applicant filed an after-final Amendment in response to the Office action on June 11, 2008. In response to the Amendment, this Office mailed a Notice on Noncompliant Amendment on July 25, 2008. Applicant filed a petition to withdraw the Notice on Noncompliant Amendment on August 6, 2008, which was granted in a Decision mailed October 27, 2008. The Decision granting the petition forwarded the application to the Technology Center for processing and consideration of the Pre-Appeal Brief Request for Review and petition to withdraw restriction requirement filed with the Pre-Appeal Brief Request for Review and Notice of Appeal filed September 23, 2008.

Analysis and conclusion

Applicant timely filed a Pre-Appeal Brief Request for Review and Notice of Appeal, and a request and fee for a two (2) month extension of time, on September 23, 2008. Accordingly, the holding of abandonment for failure to timely and properly reply to the final Office action is hereby withdrawn.

The application is being referred to Technology Center Art Unit 2624 for processing and consideration of the Pre-Appeal Brief Request for Review and petition to withdraw restriction requirement filed with the Pre-Appeal Brief Request for Review and Notice of Appeal filed September 23, 2008.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

/Derek L. Woods/
Derek L. Woods
Attorney
Office of Petitions